

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

FILED '08 NOV 19 11:05 USDC-ORE

FRANK SCHLISKE,

Plaintiff,

v.

ALBANY POLICE DEPARTMENT; JASON  
CARLILE,

Defendants.

Case No. 6:08-cv-6098-AA

**PLAINTIFF'S MOTION FOR  
SUMMARY JUDGMENT---  
LIBEL—JASON CARLILE**

Pursuant to FRCP 56, Plaintiff Frank Schliske moves for summary judgment in his claim for relief—libel against defendant Jason Carlile. This motion is based on the grounds that Mr. Carlile has not disputed the facts alleged in the complaint, the facts are clear from the supporting exhibits such that the facts are not in dispute. Mr. Schliske is entitled to summary judgment as a matter of law.

Mr. Schliske's Motion is supported by the entire file in this case and the following points and authorities.

**POINTS AND AUTHORITIES**

This case involves statements made by Linn County District Attorney Jason Carlile to the local newspaper, the Albany Democrat Herald, with understanding by Mr. Carlile that his statements would be published and be read by over 20,000 local readers.

Mr. Schliske had just had Manslaughter -1 charges against him dismissed after the man he allegedly killed turned up alive and no evidence had been found of a death. However, Mr. Carlile made statements after the dismissal, published in the Democrat Herald, that strongly imputed that despite all this there was a killing, Mr. Schliske is somehow the killer and the investigation is continuing. These statements were made outside of the "judicial function" hence are not entitled to prosecutorial immunity. See Buckley v Fitzsimmons, 509 US 259 (1993) and Genzler v Longanbach, US 9<sup>th</sup> Circuit Court of Appeals No 02-56572 (2004)

Mr. Schliske's photo had earlier appeared prominently in a feature article on the alleged "killing". Mr. Carlile is a prominent public figure whose opinions in legal matters carry great credibility in the Linn County community; Mr. Schliske is a working man and not a killer. Any allegation or implication that Mr. Schliske is a killer is false and libelous.

This libel claim is brought to this court as a State of Oregon common law tort via supplemental jurisdiction. Hence, Oregon law is applicable.

The elements of a libel claim are as follows:

- 1) A statement concerning the person (Mr. Schliske).
- 2) That is defamatory;
- 3) Is False;

4) Is published; and

5) That tends to diminish that person's reputation.

Wallulis v Dymowski, 323 Or 337, 343, 918 P2d 755 (1996); L & D of Oregon, Inc v American States Ins Co. 171 Or App 17, 26, 14 P3d 617 (2000).

A statement is defamatory if it is a factual assertion that tends to subject the person to "hatred, contempt or ridicule," or tends to "diminish the esteem, respect, goodwill or confidence in which (the person) is held" by a substantial and respectable majority of the community. Reesman v Highfill, 327 Or 597, 603, 965 P2d 1030 (1998).

A defamatory statement need only to "concern" the person and the person does not have to be identified by name. See Patzer v Liberty Communications, Inc. 58 Or App 679 682-683 650 P2d 141 (1982).

In order to be actionable, a defamatory statement must be published.. In order to be published, the defamatory statement must be heard (slander) or read (libel) by someone. Wallulis v Dymowski, *ibid*. Some statements are defamatory per-se. Libel is actionable per se. Hinkle v Alexander, 244 Or 271, 277, 417 P2d 586 (1966). Other statements may also be defamatory per se. Statements that impute the commission of a crime of moral turpitude are actionable per se. See in Re Nuss, 355 Or 368, 373-374, 67

P3d 386 (2003); Muresan v Philadelphia Romanian Pentecostal Church, 154 Or App 465, 473-474, 962 P2d 711 (1998). Statements that prejudices the person in his or her business, trade or profession are actionable per-se.

Here it is undisputed that Defendant Carlile made the statements knowing they would be published; they were published and read by a large readership; and clear that the statements imply that Mr. Schliske killed someone, which is false as Mr. Schliske has never killed anyone.

Given that libel is actionable per se, general damages are presumed. C.A.R. Tow, Inc. v Corwin, 76 Or App 192, 195, 708 P2d 644. (1985). \$100,000 is a reasonable amount for damages, in view of the totality of circumstances of the case.

For all of the reasons stated, Mr. Schliske is entitled to Summary Judgment on his Libel Claim against Defendant Jason Carlile.

Dated This 17 Day of November, 2008



Frank Schliske



# Homicide probe: APD looks for body

BY CARRIE PETERSEN  
ALBANY DEMOCRAT-HERALD

Albany police say they have made an arrest in a homicide investigation but they have not yet found the victim's body.

Franklin Wade Schliske, 38, of Albany was arrested Monday at the Albany Police Department on the charge of first-degree manslaughter. He was being held at the Linn County Jail and was scheduled to be arraigned this afternoon in Linn County Circuit Court.

Few details about the investigation have been released.

Schliske is accused of killing David Russell Sitton, 39, of Albany during "some sort of struggle," Detective Sgt. Marv Hammersley said this morning.

Investigators believe that the fight occurred sometime late Thursday or early Friday at an apartment within a house in the 200 block of Sixth Avenue S.E. Police learned about it later in the day Friday when they received a tip.

Police are not saying how Sitton died. His body has not been found.

"We're exploring the leads we have at this time," Hammersley said.

Anyone with information is asked to call the Albany Police Department's detective unit at 917-7686 during business hours, or the department's main number at 917-7680 at any other time.



**Franklin Schliske**  
Charged in manslaughter



**David Sitton**  
Search ongoing

This appeared

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Albany Democrat

Herald.

Early December 2008



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## No body: Linn DA drops manslaughter charge

By Carrie Petersen  
Albany Democrat-Herald

A manslaughter charge against Frank Wade Schliske, who was named as a suspect in a homicide investigation last week, has been dismissed.

"We don't have enough evidence to proceed at this time," Linn County District Attorney Jason Carlile said.

Schliske, 38, of Albany was arrested last week after Albany police opened an investigation into whether he may have killed another man.

Investigators named a victim but there was no body. The man who was believed to be the victim turned up at the Albany Police Department and was cited on unrelated warrants.

No other victim has been named. However, detectives are still working. The initial information in the case was that Schliske had killed another man during a struggle.

"The case is not closed," Carlile said. "This is still a homicide investigation."

Schliske had not been released from the Linn County Jail as of this morning.

He was held there all last week even after the "victim" in the homicide investigation turned out to be alive.

Carlile said the victim's identity was not required for making the manslaughter charge. Legally, the evidence in a manslaughter case has to show that the suspect killed a "human being." However, from a "practical trial point of view, it's important to know who is dead," Carlile said.



### DH Reader Comments

The comments below are from readers of democratherald.com and in no way represent the views of the Democrat Herald or Lee Enterprises.

**Schuetf** wrote on Dec 12, 2007 8:59 AM:

"Something about this really gives me a bad taste...what exactly is going on Linn County? There is no evidence, the "victim" is alive and a person is still being held? Hey, this is not GITMO. Show your cards Carlile."

\*Member ID: |

\*Password: |

You must be logged  
in to comment.

### **CERTIFICATE OF SERVICE**

**This is to certify that Plaintiff Frank Schliske served**  
**true copies of Plaintiff's Motion For Summary Judgment-Jason**  
**Carlile by mailing such in sealed envelopes first class mail post-**  
**-age fully prepaid to the attorney's for defendants Albany Police**  
**Department and Jason Carlile at the following addresses:**

**Gerald L Warren, Atty.  
280 Liberty St, SE St 206  
Salem OR 97301**

**Joseph G Groshong, Atty  
1162 Court Street  
Salem OR 97301-4096**

**Executed this November 17 2008**

  
**Frank Schliske**